

Exhibit 353

United States of America ex rel. Ven-A-Care of the Florida Keys, Inc., et al.
v. Dey, Inc., et al., Civil Action No. 05-11084-PBS

**Exhibit to the August 28, 2009 Declaration of Sarah L. Reid in Support
of Dey's Opposition to Plaintiffs' Motion for Partial Summary Judgment**

ENDORSED

APR 15 2003

Clerk of the Napa Superior Court
By: L. WALKER
Deputy**Coudert Brothers LLP**

ROBERT A. CHRISTOPHER (SBN 89035)

ERIK HANSHEW (SBN 214292)

530 Lytton Avenue, Suite 300

Palo Alto, California 94301-1541

Telephone: (650) 470-2900

Telecopier: (650) 470-2901

Dickensen Peatman & Fogarty PLC

PAUL G. CAREY (SBN 105357)

809 Coombs Street

Napa, California 94559-2977

Telephone: (707) 252-7122

Telecopied: (707) 255-6876

Attorneys for Plaintiff
Dey, L.P.**SUPERIOR COURT OF THE STATE OF CALIFORNIA****IN AND FOR THE COUNTY OF NAPA**

DEY, L.P., a Delaware Limited Partnership,

Plaintiff,

vs.

FIRST DATABANK, INC., a Missouri
corporation, d/b/a First DataBank and d/b/a
PriceAlert; and
WOLTERS KLUWER HEALTH, INC., a
Delaware corporation, d/b/a Medi-Span and
d/b/a Facts and Comparisons,

Defendants.

Case No. **26-21019****DECLARATION OF PAM MARRS IN
SUPPORT OF PLAINTIFF'S *EX PARTE*
APPLICATION FOR A TEMPORARY
RESTRAINING ORDER AND ORDER
TO SHOW CAUSE RE PRELIMINARY
INJUNCTION****Date: April 15, 2003****Time: 3:00 p.m.****Dept.: B****Complaint Filed: April , 2003****Trial Date: N/A**I, Pamela R. Marrs, declare under penalty of perjury under the laws of the State of
California as follows:

- 1 -

DECLARATION OF PAM MARRS IN SUPPORT OF PLAINTIFF'S APPLICATION FOR TRO AND OSC RE
PRELIMINARY INJUNCTION
PAI OAL TO 4057854V1Coudert Brothers LLP
TEL: (650) 470-2900
FAX: (650) 470-2901

1 1. I am the Senior Vice President and Chief Financial Officer of Dey, Inc., a Delaware
2 corporation which is the sole general partner of Dey, L.P. ("Dey"), a Delaware limited
3 partnership having its principal place of business and manufacturing facilities at 2751 Napa
4 Valley Corporate Drive, Napa, California 94558. Dey is the plaintiff in the above-referenced
5 action. As to the following facts, I know them to be true of my own knowledge and, if required,
6 could competently testify thereto. As to those matters stated on information and belief, I believe
7 them to be true.

8 2. I have been employed as an executive officer and Chief Financial Officer of Dey and
9 Dey, Inc. for approximately 13 years.

10 3. In my position as Senior Vice President and Chief Financial Officer, I have the
11 financial responsibility for Dey, and am involved in executive decisions relating to the future of
12 Dey's business.

13 4. Various Dey staff members have informed me that First DataBank and Medi-Span,
14 two electronic price reporting services to whom we provide pricing data, have recently changed
15 the methodology they have used for the past ten years or more to calculate the published AWP
16 for Dey's products. As a result, during the first week of April 2003, First DataBank and Medi-
17 Span have dramatically lowered the AWP's reported for Dey's Albuterol Sulfate, Cromolyn
18 Sodium and Ipratropium Bromide products, while we have no information that First DataBank
19 has lowered the AWP's reported with respect to the products of Dey's competitors.

20 5. I have also been informed that numerous customers have called to complain that as a
21 result of the lower AWP reported for Dey's products, they are not receiving adequate
22 reimbursement for Dey's products from third party payors such as private insurance and state
23 Medicaid programs. Some of Dey's customers have indicated that, should the AWP's reported by
24 First DataBank and Medi-Span remain significantly lower than the AWP's of Dey's competitors,
25 they will no longer buy Dey's products and will buy products from those competitors.

26 6. Dey's annual sales of Albuterol Sulfate, Ipratropium Bromide and Cromolyn Sodium
27 were in excess of \$100,000,000.00 dollars for 2002.

28 - 2 -

DECLARATION OF PAM MARRS IN SUPPORT OF PLAINTIFF'S APPLICATION FOR TRO AND OSC RE
PRELIMINARY INJUNCTION
PALOALTO 4057854V1

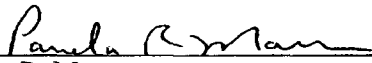
Coudert Brothers LLP
TEL: (650) 470-2900
FAX: (650) 470-2901

1 7. Over the past ten years, Dey has sold over a billion dollars in generic pharmaceuticals
2 the U.S. Most of these drugs were made by Dey at its facility in Napa County, California.

3 8. The lowering of Dey's reported AWP by First DataBank and Medi-Span will result in
4 significant and irreversible financial harm to Dey's business.

5 9. In fact, Dey has already considered reducing production of its generic products at the
6 Napa plant in anticipation of mass customer defection due to First DataBank's and Medi-Span's
7 conduct.

8
9 I declare under penalty of perjury under the laws of the State of California that the
10 foregoing is true and correct and that this declaration was executed this 14 day of April, 2003 at
11 Napa, California.

12
13
14 
15 Pamela R. Marrs
16

Coudert Brothers LLP
TEL: (650) 470-2900
FAX: (650) 470-2901

17
18
19
20
21
22
23
24
25
26
27
28
- 3 -

DECLARATION OF PAM MARRS IN SUPPORT OF PLAINTIFF'S APPLICATION FOR TRO AND OSC RE
PRELIMINARY INJUNCTION
PALOALTO 4057854V1